

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BERTHA PALENZUELA

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK POLICE
DEPARTMENT, POLICE OFFICER JOHN DOES #1-#5
INDIVIDUALLY AND AS A POLICE OFFICERS SUED IN
FICTICIOUS CAPACITIES AS THEIR IDENTITIES ARE
UNKNOWN, INDIVIDUALLY AND AS POLICE OFFICERS.

Defendants.
-----X

VERIFIED
COMPLAINT

Docket No.:

Jury Trial Demanded

Plaintiff, Bertha Palenzuela, by her attorneys, Law Office of Edward Pichardo PLLC
complaining of the defendants, respectfully alleges as follows:

PRELIMINARY STATEMENT

1) Plaintiff bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. §§1981, 1983 and 1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitution of the State of New York and the United States as well as State Law claims articulated herein.

NATURE OF CLAIMS

2) Plaintiff seeks redress pursuant to 42 U.S.C. §1983 and 1988, et. seq, for violation of her rights secured by the First, Fourth, Sixth and Eight Amendments and Due Process clause of the Fourteenth Amendment of the United States Constitution.

3) Plaintiff also seeks redress under Article 1 Section 11 of the New York State Constitution for denial of Equal Protection and redress for tortuous conduct against Plaintiff by Defendants through battery, false arrest, false imprisonment, illegal search and seizure, abuse of power and authority, conspiracy and Prima Facie Tort.

JURISDICTION

4) This action is brought pursuant to 42 U.S.C. §§1981, 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

5) Jurisdiction is found upon 28 U.S.C. §§ 1331, 1343 and 1367.

VENUE

6) Venue is properly laid in the Southern District of New York under 28 U.S.C. § 1391 (b), in that this is the district in which the claim arose.

JURY TRIAL DEMANDED

7) Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P.38 (b). Plaintiff seeks both compensatory and punitive damages, affirmative and equitable relief an award of costs, interest, and attorney's fees and seek other further relief as this Court deems equitable and just.

PARTIES

8) Plaintiff, Bertha Palenzuela, Hispanic female currently residing at 441 West 49th Street #3, New York, New York 10029 and at the time of this incident resided at the above-mentioned location.

9) Defendant CITY OF NEW YORK was and is a Municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

10) Defendant CITY OF NEW YORK maintains the New York City Police Department (hereinafter referred to as "NYPD"), a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the aforementioned municipal corporation, CITY OF NEW YORK.

11) That at all times hereinafter mentioned, Police Officers John Doe #1-#5 were duly sworn police officers of the New York City Police Department and were acting under the supervision of said department and according to their official duties.

12) That at all times hereinafter mentioned the Defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State of New York and/or the City of New York.

13) Each and all of the acts of the Defendants alleged herein were done by Defendants while acting within the scope of their employment by Defendant CITY OF NEW YORK.

FACTS

14) On or about June 1, 2020 at approximately 9:30 p.m., Plaintiff Palenzuela was lawfully in the vicinity of 6th Avenue between West 55th and 56th Streets in New York, New York when she was knocked down and seized by John Doe #1 to #2 uniformed police officers.

15) Plaintiff was observing the arrest of an African-American male while videotaping the incident.

16) The Plaintiff told the arresting officer “don’t hurt him, I am recording.”

17) Another police officer arrived and forcefully pushed the Plaintiff with a club while saying “get back”.

18) The police officer that pushed the Plaintiff yelled “get back” again and hit her with his club.

19) Defendant knocked Plaintiff down to the ground and placed the full weight of his body on top of her.

20) The Defendant told Plaintiff to move while on top of her.

21) Plaintiff replied “how can I move” since the Defendant was still on top of her.

22) As another police officer approaches the Defendant states “get up and move” and both

police officers pulled Plaintiff up off of the ground.

23) Once off the ground the Plaintiff walked backwards and away from the police officers.

24) The Defendant police officer continued to forcibly push the Plaintiff with his club despite her being a distance away from the area where the arrest was taking place.

25) At a certain point the Defendant stops pushing the Plaintiff and allows her to leave the scene.

26) During this encounter with the Defendant the Plaintiff was hit with a club approximately four times in addition to being knocked to the ground and seized by the Defendant.

27) All the above occurred as a direct result of the unconstitutional policies, customs or practices of the City of New York, including, without limitation, the inadequate, screening, hiring, retaining, training and supervising of its' employees, deliberate indifference as to punishment for misconduct against Bertha Palenzuela.

28) As a result of the foregoing, Bertha Palenzuela sustained, inter alia, bruises, injury to lower back, emotional distress, embarrassment, humiliation and deprivation of his Constitutional Rights.

FEDERAL CLAIMS

AS AND FOR A FIRST CAUSE OF ACTION (Deprivation of Rights Under 42 U.S.C. §§1981 and 1983)

29) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "28" with the same force and effect as if fully set forth herein.

30) All of the aforementioned acts of Defendants, their agents, servants and employees were carried out under the color of state law.

31) All of the aforementioned acts deprived Plaintiff, Bertha Palenzuela of her rights, privileges and immunities guaranteed to as a citizen of the United States by the Fourth and

Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §§1981 and 1983.

32) The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto, and with the intent to discriminate on the basis of gender, race and ethnicity.

33) The Defendants herein battered the Plaintiff more specifically touched the Plaintiff's body without her consent.

34) Defendants battered Bertha Palenzuela by touching her person, chest, stomach, arms and legs as she stood on a public street.

35) The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the CITY OF NEW YORK and the New York City Police Department, all under the supervision of ranking officers of said department.

36) Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

37) As a result of the foregoing, Plaintiff, Bertha Palenzuela is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individuals in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A SECOND CAUSE OF ACTION

(False Detention/ False Arrest/ Unlawful Imprisonment under 42 U.S.C. § 1983)

38) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "37" with the same force and effect as if fully set forth herein.

39) Defendants did falsely detain the Plaintiff, Bertha Palenzuela, without Probable Cause, causing her to be detained against her will for an extended period of time and subjected to physical restraint.

40) Defendants' false detention, of Plaintiff, Bertha Palenzuela was without Probable Cause and said misconduct was malicious in nature.

41) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A THIRD CAUSE OF ACTION
(Violation of the Equal Protection Clause under 42 U.S.C. § 1983)

42) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "41" with the same force and effect as if fully set forth herein.

43) Plaintiff, Bertha Palenzuela, was falsely detained and physically restrained. During this physical restraint, Bertha Palenzuela, was forcibly placed against the ground and seized resulting in a battery and false detention.

44) The physical restraint of the Plaintiff, Bertha Palenzuela, was based on her race, ethnicity and gender and the failure to intervene to prevent such treatment committed by the named Defendants were also based on race, ethnicity and gender of the Plaintiff, Bertha Palenzuela.

45) The battery and false detention committed on Bertha Palenzuela were based on her race, ethnicity and gender, and but for her race, ethnicity and gender Bertha Palenzuela would not have been physically restrained.

46) Moreover, the failure to intervene by other unknown officers present, as to said battery was founded on Bertha Palenzuela's race, ethnicity and gender.

47) The Defendants' false detention of Bertha Palenzuela were based on her race, ethnicity and gender as well as the named Defendants' failure to intervene as to this misconduct.

48) As a result of the foregoing, Plaintiff, Bertha Palenzuela, was deprived of her rights under the Equal Protection Clause of the United States Constitution.

49) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A FIFTH CAUSE OF ACTION
(Deprivation of Substantive Due Process under 42 U.S.C. § 1983)

50) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "49" with the same force and effect as if fully set forth herein.

51) The Defendants conduct herein was an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment.

52) As a result of the foregoing, Plaintiff, Bertha Palenzuela, was deprived of his liberty and right to substantive due process, causing emotional injuries.

53) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A SIXTH CAUSE OF ACTION
(Failure to Intervene under 42 U.S.C. § 1983)

54) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "53" with the same force and effect as if fully set forth herein.

55) Defendants have an affirmative duty to intervene on behalf of Plaintiff, Bertha Palenzuela whose constitutional rights were being violated in her presence by other officers.

56) The Defendants' failed to intervene to prevent the unlawful conduct described herein.

57) As a result of the foregoing, Plaintiff, Bertha Palenzuela's liberty was restricted for an extended period of time, she was caused pain, bruising, put in fear of her safety, and she was humiliated and subjected to other physical restraints.

58) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Supervisory Liability under 42 U.S.C. § 1983)

59) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "58" with the same force and effect as if fully set forth herein.

60) The supervisory defendants personally caused Plaintiff, Bertha Palenzuela's constitutional injury by being deliberately or consciously indifferent to the rights of others in failing to properly supervise, train and/or discipline their subordinates employees.

61) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Municipal Liability under 42 U.S.C. § 1983)

62) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "61" with the same force and effect as if fully set forth herein.

63) Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

64) The aforementioned customs, policies, usages, practices, procedures and rules of the New York City Police Department included, but were not limited to, arresting citizens without probable cause, and engaging in falsification of facts/ evidence for the reason to detain the Plaintiff and in efforts and support of violating Plaintiff's rights. In addition, the CITY OF NEW YORK engaged in a policies such as Stop and Frisk, Broken Windows and other customs or practices which are discriminatory in its implementation and said misconduct is treated with deliberate indifference, moreover THE CITY OF NEW YORK provided inadequate screening, hiring, retaining, training and supervising its employees that was the moving force behind the violation of Plaintiff, Bertha Palenzuela's rights as described herein. As a result of the failure of the CITY OF NEW YORK to properly recruit, screen, train, discipline, and supervise its officers, including the individual Defendants, Defendant CITY OF NEW YORK has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

65) The CITY OF NEW YORK deliberate indifference illustrated by the lack of disciplining officers for their misconduct behavior further embeds a culture, policies, practices, repeated misconduct which now becomes the norm as to police behavior.

66) The foregoing customs, policies, usages, practices, procedures, deliberate indifferences to discipline and rules of the CITY OF NEW YORK and the New York City Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of Plaintiff, Bertha Palenzuela.

67) The foregoing customs, policies, usages, practices, procedures, deliberate indifferences to discipline and rules of the CITY OF NEW YORK and the New York City Police Department were direct and proximate cause of the constitutional violations suffered by Plaintiff, Bertha Palenzuela as alleged herein.

68) The foregoing customs, policies, usages, practices, procedures, deliberate indifferences to discipline and rules of the CITY OF NEW YORK and the New York City Police Department

were the moving force behind the Constitutional violations suffered by Plaintiff, Bertha Palenzuela as alleged herein.

69) As a result of the foregoing customs, policies, usages, practices, procedures, deliberate indifference as to discipline and rules of the CITY OF NEW YORK and the New York City Police Department, Plaintiff, Bertha Palenzuela was unlawfully detained.

70) Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating Plaintiff, Bertha Palenzuela's constitutional rights.

71) All of the foregoing acts by Defendants deprived Plaintiff, Bertha Palenzuela of federally protected rights, including, but not limited to the right:

- A. Not to be deprived of liberty without due process of law;
- B. To be free from false detention and unlawful imprisonment;
- C. To be free from the failure to intervene;
- D. To be free from malicious abuse of process; and excessive force, battery and assault;
- E. To receive equal protection under law.

72) As a result of the foregoing, Plaintiff, Bertha Palenzuela, is entitled to compensatory damages in an amount to be fixed by a jury, and are further entitled to punitive damages against the individual Defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

WHEREFORE, Plaintiff, Bertha Palenzuela demands judgment and prays for the following relief jointly and severally, against defendants as follows:

1. Full and fair compensatory damages in an amount to be determined by a jury
2. Punitive damages in an amount to be determine by a jury;
3. Reasonable attorney's fees and the costs and disbursements of this action; and
4. Such other and further relief as appears just and proper.

Plaintiff further asserts the following state law violations as a result of the defendants' misconduct:

AS AND FOR A NINTH CAUSE OF ACTION
PURSUANT TO NEW YORK CONSTITUTION
ART.I, 11

73) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "72" with the same force and effect as if fully set forth herein.

74) By the aforesaid acts, Defendants have violated Plaintiff's right to the equal protection laws under Article I, 11 of the New York State Constitution, thereby giving rise to cause of action pursuant to that Article.

75) The conduct and actions of the named Defendant Police Officers, and Defendant City of New York, acting under color of law, in falsely detaining, imprisoning, battering and conspiring against Plaintiff, was done intentionally, maliciously and/or with a reckless disregard for the natural probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the Plaintiff's Constitutional rights as guaranteed under law and Constitution of the State of New York. The above described actions and omissions engaged in under color of state law by the named Police Officer Defendants, including Defendant City of New York, sued as a person within the meaning of Article I, 11 deprived the Plaintiff of rights, including but not limited to, their rights under Article I, 8, 9 guaranteeing freedom of expression and association, Article I, 12 guaranteeing protection against unlawful seizure of his person, Article I, 11 guaranteeing due process and equal protection under the law, and Article I, 15 guaranteeing protection from cruel and unusual punishment.

76) By reason of the Constitutional violations by Defendants, Plaintiff has been damaged as set forth above.

AS AND FOR A TENTH CAUSE OF ACTION
NEGLIGENT HIRING, TRAINING AND SUPERVISION

77) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "76" with the same force and effect as if fully set forth herein.

78) The above described injuries suffered by the Plaintiff is the proximate result of the negligence of the Defendant New York City Police Department, in that the Defendant City of New York and the New York Police Department failed to exercise reasonable care in the hiring, employment, supervision and training of its employees.

79) The Defendant City of New York and the New York City Police Department had, or should have had, knowledge of the vicious and violent tendencies of its employees, including all of the named Police Officer Defendants.

80) Defendant City of New York, and the New York City Police Department knew or should have known of the unlawful actions of the named Police Officer Defendants, through actual and constructive notice, of their unlawful activities, including but not limited to those allegations as set forth in the preceding paragraphs above. Defendants City of New York, and New York City Police Department failed to exercise reasonable care by retaining and not terminating the employment of the named Police Officer Defendants or taking other appropriate action. The occurrence complained of herein were due to the negligence and recklessness of the Defendant City of New York and the New York Police Department.

81) By reason of the Constitutional violations by Defendants, Plaintiff has been damaged as set forth above.

**AS AND FOR A ELEVENTH CAUSE OF ACTION
FALSE ARREST/ FALSE DETENTION/ FALSE IMPRISONMENT**

82) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "81" with the same force and effect as if fully set forth herein.

83) By the aforesaid acts, Defendants unlawfully and unjustifiably arrested and detained Plaintiff without any lawful cause whatsoever. Defendants acted willfully, unlawfully, maliciously, recklessly and negligently in detaining Plaintiff despite Plaintiff's innocence, and

utilized its power and authority to illegal seize, the Plaintiff as well as to cover-up their own wrongful conduct. The Defendants illegally seized Plaintiff's person detaining, and imprisoning the Plaintiff by not allowing her to exercise her right to liberty when no probable cause existed to detain the Plaintiff.

84) The Defendants tortuous conduct as set forth above herein directly resulted in the Plaintiff being wrongfully detained.

85) By reason of the Constitutional violations by Defendants, Plaintiff has been damaged as set forth above.

AS AND FOR A TWELFTH CAUSE OF ACTION
PRIMA FACIE TORT

86) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "85" with the same force and effect as if fully set forth herein.

87) In falsely detaining, imprisoning, fabricating and conspiring against Plaintiff, Defendants acted with malicious intent, recklessness and negligence to injure and harm the Plaintiff.

88) By reason of the tortuous conduct of Defendants, Plaintiff has been damaged as set forth above.

89) For all claims under New York State Law, Defendants are jointly and severally liable to the Plaintiff inasmuch as this action arises out of the exceptions set forth in 1602 subdivisions 5, 7 and 11 of the Civil Practice Law and Rules.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
ASSAULT AND BATTERY

90) Plaintiff repeats, reinstates, and realleges each and every allegation contained in paragraphs "1" through "89" with the same force and effect as if fully set forth herein.

91) By the aforesaid acts, Defendants have caused physical harm and injury upon the

person(s) of the individual Plaintiff named in the complaint herein. Defendants acted willfully, unlawfully, maliciously, recklessly, unjustifiably, negligently, in the abuse of power and authority, excessive use therein which resulted in the Plaintiff being battered.

92) By reason of the Constitutional violations by Defendants, Plaintiff has been damaged as set forth above.

WHEREFORE, Plaintiff, Bertha Palenzuela respectfully requests judgment upon all causes of action against Defendants as follows:

1. With respect to Defendant The City of New York; and New York Police Department


- (a) Declaratory judgment declaring that Defendant City of New York and New York Police Department has violated the aforesaid statutes and constitutions.
- (b) Restitution to Plaintiff of her rights, privileges, benefits and income which would have been received by her but for the Defendants unlawful, wrongful, tortuous, and unconstitutional conduct;
- (c) Compensatory damages in an amount to be determined by the court and jury;
- (d) Punitive damages in the amount to be determined by the court and jury
- (e) All legal and statutory interest on sums awarded
- (f) Such other and further relief as this honorable court may deem just, proper and equitable

2. With respect to each Police Officer Defendants;

- (a) Declaratory judgment declaring that the Defendants have violated the aforesaid statutes and constitutions;
- (b) Restitution to Plaintiff of her rights, privileges, benefits and income which would have been received by her but for Defendants' unlawful, wrongful, tortuous, and unconstitutional conduct.

- (c) Compensatory damages in an amount to be determined by the court and jury;
- (d) Punitive damages in an amount to be determined by the court and jury;
- (e) All legal and statutory interest on sums awarded.

Dated: New York, New York
April 29, 2021


Law Office of Edward Pichardo PLLC
Edward Pichardo, Esq.
Attorneys for Plaintiff
112 West 34th Street, 18th Flr.
New York, New York 10120
(718) 514-9099

VERIFICATION

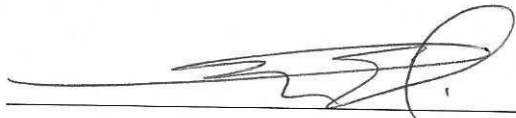
BERTHA PALENZUELA, being duly sworn, deposes and says:

I am the Plaintiff in the present case. I have read the foregoing Verified Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true. I verify under penalty under the law of the United States of America that the factual statements in this Verified Complaint concerning myself and my actions are true and correct.

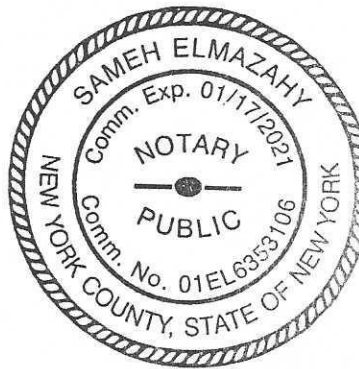

Bertha Palenzuela

Sworn to before me this

29 day of April, 2021.



Notary Public



Exp 01/17/2025